

DEPARTMENT OF STATE REVENUE

01970418.LOF

LETTER OF FINDINGS NUMBER: 97-0418 ITC INDIVIDUAL INCOME TAX FOR THE YEAR 1996

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Individual Income Tax - Imposition

Authority: U.S. CONST. amend. XVI; IND. CONST. of 1851, art. X § 8; 26 U.S.C. § 61; IC 6-3-1-1; IC 6-3-2-1; IC 6-3-1-1226 U.S.C. § 61

Taxpayer protests the imposition of Indiana Individual Income Tax on his wages.

STATEMENT OF FACTS

The taxpayer is an Indiana resident that earned wages in Indiana during 1996. The taxpayer filed an Indiana IT-40 form for 1996, on which, the taxpayer completed the form placing zeros in every line except the lines that request the amount of Indiana State and County tax Withheld. In these spaces, the taxpayer filled in the proper amount withheld. The taxpayer received a refund equaling the total amount withheld because his form shows that he had zero income for 1996. The taxpayer's form was corrected to agree with the amount shown on his wage and tax statements.

I. Individual Income Tax - Imposition

DISCUSSION

The taxpayer offered a brief in support of his protest suggesting that he filed his tax form involuntarily. The taxpayer stated that he filed the form with the zeros out of fear of "prosecution" for not filing.

The taxpayer argued that income is not defined in the Internal Revenue Code. The taxpayer offered a quotation taken selectively from U.S. v. Ballard, F.2d 400, 404 (8th Cir. 1976), stating that "the general term 'income' is not defined in the Internal Revenue Code". Id. However, the court clarifies in the very next sentence that gross income is defined in 26 U.S.C. § 61 (in pertinent part):

All income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items.

The taxpayer submitted several cases (Merchant's Loan & Trust Co. v. Smietanka, 255 U.S. 509 (1921), Doyle v. Mitchell, 247 U.S. 179 (1918), Straton's Independence v. Howbert, 231 U.S. 399 (1913)) that interpret the Corporation Excise Tax Acts of 1909 and 1913. The recurring theme in these cases is that income can only be a derivative of corporate activity. The taxpayer stated that since his income did not directly derive from corporate activity, he had no taxable income under the Corporation Excise Tax Act of 1909 as income.

The cases brought forth in support of taxpayer's arguments were based on tax laws which existed before the 16th amendment to the Constitution was ratified in 1913. The amendment gave Congress the power "[t]o lay and collect taxes on incomes, from whatever sources derived, without apportionment among the several States and without regard to any census or remuneration." The amendment empowered Congress to enact laws taxing incomes regardless of whether the source is corporate or individual. Therefore, the cases argued by taxpayer are irrelevant due to the development of the income tax code by Congress.

Article X § 8 of the Indiana Constitution empowers the General Assembly to levy and collect a tax on income. The Indiana code uses the definition of "adjusted gross income" as defined in section 62 of the Internal Revenue Code at its starting point for taxation. IC 6-3-1-1. In Section 62, Adjusted Gross Income is defined as "Gross Income" minus certain deductions. The figure arrived at after these listed deductions becomes Adjusted Gross Income for Indiana purposes.

Indiana is authorized to tax the adjusted gross income of an Indiana resident because under IC 6-3-1-12, a resident for adjusted gross income tax purposes is any individual domiciled in the state during the taxable year. The taxpayer did not contest the fact of that he is an Indiana resident. IC 6-3-2-1 which imposes a tax "upon the adjusted gross income of every resident person..." the individual income tax is due.

FINDING

The taxpayer's protest is denied. The taxpayer does have Indiana income in 1996 that is subject to individual income tax.